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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,823	08/19/2003	Stephen J. Motosko	P-1842	5172
7590	12/05/2005		EXAMINER	
Charles J. Prescott, P.A. Suite 115 2033 Wood Street Sarasota, FL 34237			FRISBY, KESHA	
			ART UNIT	PAPER NUMBER
			3715	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Titch

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/643,823	MOTOSKO, STEPHEN J.
	<b>Examiner</b>	<b>Art Unit</b>
	Kesha Frisby	3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 August 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/19/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because in Figs. 1 –11 the lines, numbers and letters are not uniformly thick and well defined, clean, etc. and solid black shading is not permitted. Please refer to Notice of Draftsperson's Patent Drawing Review for further clarification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: On page 8 line 4, "oneon" should be --one on--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 2, 7, 8, 13 & 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolan (U.S. Patent Number 6,017,260).** Referring to claim 1, Dolan discloses a housing (Fig. 1 - housing 11) including a plurality of separate viewable indicia each representative of an object which produces an audible sound associated with the corresponding said object (column 3 lines 45-50); a sound emitting area (column 47-50) of said housing in close proximity to each said viewable indicia (Fig. 1); an electronic controller operably mounted in said housing for selectively producing and emitting each of said audible sounds one at a time from the corresponding said sound emitting area (abstract : electronic sound module) responsive to manual selection (the examiner views manual selection: by pulling down the lever and once rotation has stopped one of the viewable indicia is selected) of one said viewable indicia at a time whereby the user receives an audible queue in the form of said audible sound emanating from the selected said sound emitting area (abstract) to look in the direction of said sound thereby causing an association to be made between the selected said viewable indicia depicting the object and the corresponding said audible sound (the

examiner views this element as glancing at the speaker grille 14 and the back at the selected indicia).

Referring to claim 2, Dolan discloses wherein each said viewable indicia includes a pictorial and a word description of the corresponding said object (the examiner views images 41 through 50 to include text and pictorial images).

Referring to claim 7, Dolan discloses a housing (Fig. 1 – housing 11) including a plurality of separate viewable indicia each representative of said object which produces the audible sound associated with the corresponding said object (column 3 lines 45-50); a sound emitting area (column 47-50) of said housing and a sound producing device in close proximity to each said viewable indicia (Fig. 1); an electronic controller operably mounted in said housing for selectively producing and emitting each said audible sound from the corresponding said sound producing device and said sound emitting area (abstract : electronic sound module) responsive to manual selection (the examiner views manual selection: by pulling down the lever and once rotation has stopped one of the viewable indicia is selected) of one said viewable indicia at a time whereby the user receives an audible queue to look in the direction of sound emanating from the selected sound emitting area (abstract) thereby learning to associate the selected said viewable object with its corresponding said audible sound (the examiner views this element as glancing at the speaker grille 14 and the back at the selected indicia).

Referring to claim 8, Dolan discloses wherein each said viewable indicia includes a pictorial and a word description of the corresponding said object (the examiner views images 41 through 50 to include text and pictorial images).

Referring to claim 13, Dolan discloses a housing (Fig. 1 – housing 11) including a plurality of separate viewable indicia each representative of said object which produces the audible sound associated with the corresponding said object (column 3 lines 45-50); a sound emitting area (column 47-50) of said housing in close proximity to each of said objects (Fig. 1); an electronic controller operably mounted in said housing for selectively producing and emitting or causing to be emitted each of said audible sounds one at a time from the corresponding said sound emitting area (abstract : electronic sound module) responsive to manual selection (the examiner views manual selection: by pulling down the lever and once rotation has stopped one of the viewable indicia is selected) of one said viewable indicia at a time whereby the user receives an audible queue in the form of said audible sound to look in the direction of sound emanating from the selected said sound emitting area (abstract) thereby associating the selected said viewable object with the corresponding said audible sound (the examiner views this element as glancing at the speaker grille 14 and the back at the selected indicia).

Referring to claim 14, Dolan discloses wherein each said viewable indicia includes a pictorial and a word description of the corresponding said object (the examiner views images 41 through 50 to include text and pictorial images).

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 3, 9 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolan in view of Bakst (U.S. Publication Number 2001/0034181).** Referring to claims 3, 9 & 15, Dolan discloses the device in claims 1, 7 & 13. *Dolan does not disclose wherein said housing is generally in a form of a cube, each depressible side surface of which includes one said viewable indicia and one said sound emitting area.* However, Bakst teaches wherein said housing is generally in a form of a cube (Figs. 1-4 – cube 10), each depressible side surface (paragraph 0039) of which includes one said viewable indicia (Fig 1 – animal design) and one said sound emitting area (Fig. 2 – audio response device 20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include cube shaped housing, as disclosed in Bakst, incorporated in Dolan in order to give the toy a different feature, such as, after the cube is tossed, the particular sound corresponds to the animal design on the side of the cube that faces upward when the cube comes to rest (paragraph 0005).

7. **Claims 4, 10 & 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolan in view of Mak (U.S. Patent Number 6,454,627).** Referring to claims 4, 10 & 16, Dolan discloses the device in claims 1, 7 & 13. *Dolan does not disclose wherein said housing is generally in a form of a keyboard having a plurality of depressible keys each of which includes one of said viewable indicia and one said sound emitting area.* However, Mak teaches wherein said housing (Fig. 1 – keyboard-like appendage 25) is generally in a form of a keyboard having a plurality of depressible keys (Fig. 2 – “1”-“8” resemble piano keys and column 1 lines 49 & 50) each of which includes one of said viewable indicia (Fig. 1 – numbers 44-51) and one said sound emitting area (speaker

80). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include keyboard housing, as disclosed in Mak, incorporated in Dolan in order for the child to be able to play melodies as he chooses by reading the melodies printed by corresponding numbers (column 1 lines 50-52).

8. **Claims 5, 11 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolan in view of Harrison (U.S. Patent Number 4,651,613).** Referring to claims 5, 11 & 17, Dolan discloses the device in claims 1, 7 & 13 where the housing has a generally upright disc shape with said viewable indicia (Fig. 1). *Dolan does not wherein sound emitting areas arranged in generally radially spaced orientation one to another adjacent a perimeter of said housing.* However, Harrison teaches sound emitting areas (column 2 lines 16-20) arranged in generally radially spaced orientation one to another adjacent a perimeter of said housing (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include sound emitting areas, as disclosed by Harrison, incorporated in Dolan in order to produced different tunes and/or sounds and to keep the toy from being boring.

***Allowable Subject Matter***

9. Claims 6, 12 & 18 are objected to as being dependent upon a rejected base claim, but may be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Citation of Pertinent Prior Art***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wood et al. (U.S. Patent Number 6,648,647) teaches a toy having rotating elements.

Ryan (U.S. Patent Number 3,383,114) teaches a teaching device where the user is able to move an indicator to one of the indicia.

Stewart (U.S. Patent Number 3,554,556) teaches a teaching device with a rotatable and depressible dial.

Tomellini (U.S. Patent Number 5,382,188) teaches an audio playback device with a rotatable selector.

Folson et al. (U.S. Patent Number 3,711,964) teaches an ask and answer toy where each sector contains a word and picture that represents the subject matter.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kesha Frisby whose telephone number is 571-272-8774. The examiner can normally be reached on Mon. - Wed. 7-4:30pm, Thu. 6:30-4pm & Fri. 7-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3715

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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